

Part II: Some further thoughts on insider dealing

# The Brighter Side Of Insider Dealing

*'Insider traders are just another set of hoodlums' (Rudolph Giuliani)*

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From the first part of this feature on insider dealing, one may have concluded that the subject is a technical one, rather obscure and perhaps boring. In this second part, I shall try to show that even in matters of insider dealing, a little effort and imagination will enable us to uncover a brighter and more exciting side, which is often overlooked. I shall do this by reference to literary works, mainly fiction, where insider dealing and similar activity have played an important role.

(1) An English legal publication I once read (but whose title and author have escaped me) made the interesting proposition that insider dealing is as old as creation itself. It suggested that Eve ate from the forbidden fruit acting on secret insider information whispered into her ear by the serpent:

*'...in the day ye eat thereof, then your eyes shall be opened, and ye shall be as kings...'*

(Genesis 3:2-3).

She acted on this tip coming from such an unlikely source. Both were eventually found guilty and severely punished.

(2) John Mortimer's series of short stories on the court adventures of Rumpole (perhaps better known as the husband of the quasi-biblical figure of She-who-must-be-obeyed) qualify among the best comic works in contemporary English literature. In the short story, RUMPOLE AND THE BARROW BOY, Rumpole, who is a solicitor working (and drinking)

in London especially in the Old Bailey, finds himself assisting a client facing an insider trading prosecution. His client worked as a broker in the stock-broking arm of a large financial services firm. He has been charged with making a profit from a transaction illegitimately executed on the basis of confidential corporate information which he is alleged to have acquired from the stockbroking firm which employs him. Rumpole immediately confesses his absolute ignorance on the subject.

*He was, I knew, charged with a mysterious commercial offence known to the financial connoisseurs as insider dealing... insider dealing was a closed book to me.*

The alleged offence consisted in the purchase of shares for a client in an undervalued company about to be taken over by a conglomerate, which was being advised by a different department in the firm, the Corporate Finance Department. Confidential information was not allowed to seep from one unit to the other by separating the two departments by Chinese Walls.

*Behind a what? (Rumpole interjects.)*

*You know a wall of silence. Between departments in the same building.*

*We call them Chinese walls.*

(John Mortimer, Rumpole and the Age of Miracles, 1988, Penguin Books)

(3) Oscar Wilde's play An Ideal Husband was first performed in January, 1895. Readers may remember

it produced at the Manoel Theatre by the MADC a couple of seasons ago. The play concerns an ambitious, aristocratic and successful English politician, Sir Robert Chiltern, who as secretary to a Government minister has made a considerable fortune selling highly sensitive Cabinet secrets to a German stocks speculator. In this way, this speculator manages to make a huge profit on the stock exchange by acquiring shares in the Suez Canal three days before the British Government officially announced its official backing and support for the Scheme. Sir Chiltern is now Under-Secretary for Foreign Affairs.

Sir Robert Chiltern:

*... you seem to be unable to realise that you are talking to an English gentleman.*

Mrs. Cheveley:

*I realise that I am talking to a man who laid the foundation of his fortune by selling to a Stock Exchange speculator a Cabinet secret.*

*... the letter you wrote to Baron Arnheim, when you were Lord Radley's secretary, telling the Baron to buy Suez Canal shares - a letter written three days before the Government announced its own purchase.*

Sir Robert Chiltern:

*...The affair to which you allude was no more than a speculation. The House of Commons had not yet passed the bill; it might have been rejected.*

Mrs. Cheveley:

*It was a swindle, Sir Robert. Let us call things by their proper names. It makes everything simpler...*



An attempt is being made to blackmail Sir Chiltern into recommending to Parliament the promotion and acquisition of shares in another international canal enterprise being undertaken by the Argentine Canal Scheme, in which the blackmailer and her associates have invested large sums. News of the government's support would send the price of the shares sky-high.

The ideal husband of the play, as drawn in Wilde's typical sardonic fashion, leads a very comfortable upper-class life, quick to assume the moral high ground and to sit in judgment of others. People around him admire him. He even almost manages to deceive himself that his corruption was justifiable, even necessary and worthy. At the end of the play he gets away with it - a terrible message expertly disguised by the author in the form of a traditional happy ending.

Sir Robert Chiltern:

*Of course I had private information about a certain transaction contemplated by the Government of the day, and I acted on it. Private information is practically the source of every large modern fortune...*

*Every man has to fight his century with its own weapons. What this century worships is wealth. The God of this century is wealth. To succeed one must have wealth. At all costs one must have wealth... I did not sell myself for money. I bought success at a great price. That is all.*

(Oscar Wilde, *An Ideal Husband*, Mermaid Books edition, 1993).

(4) Alexander Dumas's nineteenth century novel *The Count of Monte Cristo* remains one of the most popular and dramatic revenge stories. Originally, it was not published as a novel, but was published in episode form in a magazine. For this reason

the book reads like one of these television soap operas constructed in parts, each roughly covering the same length.

In the course of the novel, the hero returns from a long unjust spell in prison, under an assumed title of Count of Monte Cristo. He is determined, indeed obsessed, to exact his revenge on the persons who had, each for different motives, framed him with treason, for allegedly being a sympathiser and supporter of the exiled Napoleon. After escaping from



prison and having stumbled upon a massive treasure, the Count returns to plot the ruin of his oppressors. These include Danglars who in the meantime has evolved into a successful banker in Paris.

The Count exacts part of his revenge by tricking Danglars into hurriedly selling substantial amounts of Spanish Government bonds on the basis of apparently alarming secret official information that was however completely false and fabricated. Dumas portrays how a stock market can be manipulated by the spreading of

false news. In this case, the Count corrupts the government telegram operator to alter an official message addressed to the Ministry of the Interior so that it will say that a revolution was about to erupt in Spain, following the escape from house arrest of King Don Carlos. The Count is fully aware that the banker Danglars would be immediately alerted by an informer-insider within the Ministry, and that he would swiftly move to sell his entire considerable holding of Spanish government bonds, dumping them

at any price in order to reduce his possible future losses. In the event of a revolution, chances are that the Spanish government bonds would become worthless.

The message is eventually reproduced in the local press, and Danglars expresses relief at his narrow miss. Later however a rectification appears, but it is now too late for Danglars.

*The next day, you could read in Le Moniteur: 'Yesterday's article in Le Messager announcing Don Carlos' escape and a rebellion in Barcellona was without foundation. King Don Carlos is still in Burgos and the peninsula is entirely tranquil. A telegraphic signal, misread because of the fog, gave rise to this false report.'*

*Spanish stock rose to double its price before the alarm. In actual losses and loss of profits, it meant a million francs to Danglars.*

(Alexander Dumas, *The Count of Monte Cristo*, Chapter LXI, Penguin Classics, 1996, trans. R. Buss).

*For reasons of space, this part of the feature on insider dealing in literature will have to end here. More interesting material will be revealed in the third and final part which shall conclude this very personal review on the law regulating insider dealing ■*